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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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SALT LAKE CITY CORPORATION, a Utah municipal corporation; BP PRODUCTS NORTH AMERICA, INC., a Maryland corporation; and CHEVRON U.S.A. INC., a Pennsylvania corporation,

Plaintiffs,

v.

ERM-WEST, INC., a California corporation; COMPASS ENVIRONMENTAL, INC., a Delaware corporation; and WRS INFRASTRUCTURE AND ENVIRONMENT, INC., a North Carolina corporation, d/b/a WRSCOMPASS, INC.,

Defendants.

MEMORANDUM DECISION AND ORDER GRANTING PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE DEFENDANTS' EVIDENCE AND ARGUMENT REGARDING ALLOCATION AGREEMENT

Case No. 2:11-CV-1174 TS

District Judge Ted Stewart

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This matter is before the Court on Plaintiffs' Motion in Limine to Exclude Defendants' Evidence and Argument Regarding Allocation Agreement. Plaintiffs seek to preclude Defendants from presenting evidence or argument regarding an allocation agreement among Plaintiffs.

Under Federal Rule of Evidence 401, "[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." Rule 403 states that "[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time,

or needlessly presenting cumulative evidence.” “Rule 403 does not protect a party from all prejudice, only unfair prejudice.”<sup>1</sup>

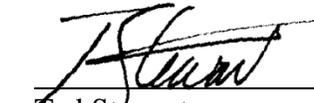
Having carefully considered the parties’ arguments, the Court finds that the allocation agreement has limited relevance. Any relevance is substantially outweighed by the danger of confusing the issues, misleading the jury, undue delay, and wasting time. The issues raised in ERM’s response to the Motion can be addressed, if necessary, in a post-trial motion.

It is therefore

ORDERED that Plaintiffs’ Motion in Limine to Exclude Defendants’ Evidence and Argument Regarding Allocation Agreement (Docket No. 415) is GRANTED.

DATED this 4th day of February, 2016.

BY THE COURT:



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Ted Stewart  
United States District Judge

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<sup>1</sup> *Deters v. Equifax Credit Info. Servs., Inc.*, 202 F.3d 1262, 1274 (10th Cir. 2000).